IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5382 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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CHANDRAKANT J PATEL

Versus

STATE OF GUJ

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Appearance:

1. Criminal Misc.Application No. 5382 of 1994

MR PM THAKKAR, Ld. SENIOR COUNSEL with MR MM TIRMIZI for the Petitioners

MS MANISHA LAVKUMAR, APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 07/08/2002

ORAL JUDGEMENT

In this petition which is filed under Section 482 of the Code of Criminal Procedure ('the Code' for short), petitioners, at the relevant point of time were serving with the Amreli Nagar Palika, against whom private complaint is filed by respondent No.2 herein in the Court of Special Judge, Amreli which has been registered vide Criminal Inquiry No. 3 of 1994 for commission of the alleged offences under Sections 161, 163, 164, 165 of the IPC and under Sections 7, 13(1)(d) and (e) read with Section 13(2) of the Prevention of Corruption Act ('the Act' for short) which was sent for investigation under Section 156(3) of the Code, have prayed to quash and set aside the said criminal complaint registered as Criminal Inquiry No. 3 of 1994 before the Special Judge, Amerli.

2. The said complaint, inter alia, alleged against the petitioners that in their capacity as a public servant, they have accumulated ill-gotten wealth which is disproportionate to their known source of income and, therefore they have committed offence under Section 13(1)(e) of the Act which punishable under Section 13(2) of the Act. The learned Special Judge, Amreli having examined the averments made in the complaint, sent the same for investigation under Section 156(3) of the Code to PI ACB Amreli. It is contended by the petitioners that on having perusal of the complaint, primafacie offence as alleged against the petitioners has not been made out and, therefore, prayed to quash the complaint to which the reference is made in earlier paragraph of this judgement.

3. Having heard Mr. P.M.Thakkar, learned Senior Counsel for the petitioners and Ms. Manisha Lavkumar, learned APP for respondent No.1 State of Gujarat and on having perusal of the averments made in the memo of the petition, grounds set out therein and the impugned complaint which was sent for investigation under Section 156(3) of the Code to PI, ACB, Amreli, it is seen that the allegations are made against the present petitioners for commission of the alleged offence under Section 13(1)(e) as they have accumulated ill-gotten wealth which is disproportionate to their known source of income. Since the complaint is sent for investigation under Section 156(3) of the Code to the PI ACB Amreli, I am of the opinion that the petition is premature as the investigation has not still commenced as this Court, has, while issuing rule, granted stay. Though, subsequently it has been vacated. Therefore, I am of the opinion that there is no merit in this petition as the challenge is made at premature stage, and the petition is therefore deserves to be rejected.

4. For the foregoing reasons, petition fails and accordingly it is rejected. Rule discharged.

5. The PI ACB, Amreli is directed to investigate the Criminal Inquiry No. 3 of 1994 for commission of the alleged offence under Section 161, 163, 164, 165 of the IPC and under Section 7, 13(1)(d) and (e) read with Section 13(2) of the Act, registered against the present petitioners and conclude the same at the earliest and report compliance as per the order dated August 26, 1994 recorded by the Special Judge, Amreli be made to the concerned Judge forthwith.

(A.M.Kapadia,J)

Jayanti*